

REMARKS

I. Status of Claims

Claims 1, 7, 10, 12-13, and 22 are pending. Claims 1 and 22 are independent. Claim 2 is currently canceled without prejudice to and/or disclaimer of the subject matter therein and claims 3-6, 8-9, 11, and 14-21 were previously canceled.

Claim 2 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite.

Claims 1-2, 7, and 22 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Sakai (JP Publication 63-119166) (hereinafter "Sakai").

Claims 1-2, 7, 10, 12-13 and 22 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hamada et al. (JP2001-357869) (hereinafter "Hamada") in view of Sakai.

The Applicant respectfully requests reconsideration of these rejections in view of the foregoing amendments and the following remarks.

II. Reliance Upon Abstract/Foreign Language Document in Support of the Rejection

The Applicant does not have an English translation of Sakai. Also, it is noted that a machine translation is not available on the JPO website.

That said, the Applicant respectfully submits that the USPTO provide a translation for the following reasons set forth in MPEP § 706.02.

"Prior art uncovered in searching the claimed subject matter of a patent application often includes English language abstracts of underlying documents, such as technical literature or foreign patent documents which may not be in the English language. When an abstract is used to support a rejection, the evidence relied upon is the facts contained in the abstract, not additional facts that may be contained in the underlying full text document. Citation of and reliance upon an abstract without citation of and reliance upon the underlying scientific document is generally *inappropriate* where both the abstract and the underlying document are prior art. See *Ex parte Jones*, 62

USPQ2d 1206, 1208 (Bd. Pat. App. & Inter. 2001) (unpublished). To determine whether both the abstract and the underlying document are prior art, a copy of the underlying document must be obtained and analyzed. If the document is in a language other than English and the examiner seeks to rely on that document, ***a translation must be obtained*** so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection. The record must also be clear as to whether the examiner is relying upon the abstract or the full text document to support a rejection.”

III. **35 USC 112, second paragraph, Rejection and Claim Objection**

Without waiving any argument and to facilitate prosecution, claim 2 is canceled without prejudice to and/or disclaimer of the subject matter therein.

The Applicant respectfully submits that the Examiner hold the objection of claim 22 in abeyance until the indication of allowable subject matter.

IV. **Pending Claims and Rejections under 35 U.S.C. § 102/103**

Claims 1 and 22 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Sakai and under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hamada in view of Sakai.

The Applicant respectfully submits that claim 1 is patentable over the cited references at least because it recites, *inter alia*, “...wherein ***a pitch*** between the ribs of the first cell block is ***larger than a pitch between the ribs of the second cell block***, and a cross-sectional area of gas paths formed between the ribs of the first cell block are larger than gas paths formed between the ribs of the second cell block...,” “...a supply port through which gas is supplied to the fuel cell stack, and which is provided in a first end portion of the fuel cell stack, ***and the fuel cell stack is formed by stacking the cell blocks such that the cell block having the smaller pressure loss is disposed in a vicinity of a second end portion of the fuel cell stack***...” and “...wherein the fuel cell further comprises a discharge port through which gas is discharged from the fuel cell stack,

and which is provided in *the same first end portion of the fuel cell stack as the supply port.*"
(emphasis added)

As pointed out in our December 4, 2007, January 4, 2008, July 31, 2008 and August 28, 2008, responses, neither Hamada nor Sakai teach each and every limitation of the invention of claim 1 singly and/or in combination with one another. The arguments set forth at least in the August 28, 2008 response appeared to be persuasive, since in the September 25, 2008 Office Action, the rejections based upon Hamada and Sakai were withdrawn as being moot in view of a new ground of rejection (presumably because it was thought that this was a better rejection). Now, almost one year later, following several purported attempts to rely upon Katsuo to modify Hamada, the Office Action has again applied Hamada and Sakai.

The Applicant respectfully submits that this rejection was already set forth in several Office Actions, and has already been addressed in four previous responses, thus, it is unclear why the rejection is being reintroduced at this stage of prosecution. With that said, if the Office Action contends that it is being properly reintroduced, then it is not clear why it was ever withdrawn in the first place.

Again, with respect to Hamada, this reference merely discloses that gas is supplied from an end portion of the fuel cell stack, and cell blocks having a smaller pressure loss are disposed in both ends of the fuel cell stack. However, in contrast to the invention of claim 1, it is *not* disclosed that the supply port and the discharge port are provided in the *same end portion* of the fuel cell stack (e.g., wherein the fuel cell further comprises a discharge port through which gas is discharged from the fuel cell stack, and which is provided in the same end portion of the fuel cell stack as the supply port). Further, also in contrast to the invention of claim 1, although Hamada discloses that a cross-sectional area of a gas path is changed by changing a depth of a groove, it is *not* disclosed to change the pitch between the ribs (e.g., wherein a pitch between the ribs of one cell block is different from a pitch between the ribs of another cell block).

Similarly, regarding Sakai, this reference again merely discloses to decrease a pressure loss of the cell block being located at a lower part in a gravitational direction. However, the invention of claim 1 is not disclosed. More specifically, it is not disclosed to decrease the pressure loss of the cell block being disposed far away from the supply port as is required by the

Applicant's claims (e.g., claim 1 recites a supply port through which gas is supplied to the fuel cell stack, and which is provided in a first end portion of the fuel cell stack, ***and the fuel cell stack is formed by stacking the cell blocks such that the cell block having the smaller pressure loss is disposed in a vicinity of a second end portion of the fuel cell stack***).

Further, the Office Action appears to rely upon Official Notice to support the rejection of the invention of claim 1 (*See* page 6, first full paragraph, of the Office Action). The Applicant respectfully *traverses* the Official Notice taken and requests evidence to substantiate the alleged motivations to modify Hamada. Specifically, the Applicant respectfully requests evidence to substantiate the theory that it would have been obvious to locate the supply and discharge ports of Hamada on the same end portion thereof in the manner as recited in the invention of claim 1. This support is required under MPEP 2144.02 and 2144.03 and unsupported allegations cannot be used to reject the claims.

In addition, as discussed in MPEP 2143.01, obviousness can *only* be established by combining or modifying the *teachings of the prior art* to produce the claimed invention where there is some *teaching, suggestion, or motivation* to do so. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (discussing rationale underlying the motivation-suggestion-teaching *test* as a guard against using hindsight in an obviousness analysis).

Also, as discussed in *KSR Int'l Co. v. Teleflex, et al.*, No. 04-1350, (U.S. Apr. 30, 2007), it remains necessary to identify the reason why a person of ordinary skill in the art would have been prompted to modify the Hamada and/or Sakai in the manner as recited in the invention of claim 1. Obviousness cannot be sustained on mere conclusory statements.

Accordingly, it is respectfully submitted that, for at least these reasons, claim 1, as well as its dependent claims, are patentable over the cited references.

Also, it is respectfully submitted that claim 22 is allowable for similar reasons. For example, as with claim 1, claim 22 recites, *inter alia*, "...wherein ***a pitch*** between the ribs of the first cell block ***is larger than a pitch between the ribs of the second cell block***, and a cross-sectional area of gas paths formed between the ribs of the first cell block are larger than gas paths formed between the ribs of the second cell block...."

V. Conclusion

In light of the above discussion, the Applicant respectfully submits that the present application is in all aspects in allowable condition, and earnestly solicits favorable reconsideration and early issuance of a Notice of Allowance.

The Examiner is invited to contact the undersigned at (202) 220-4420 to discuss any matter concerning this application. The Office is authorized to charge any fees related to this communication to Deposit Account No. 11-0600.

Respectfully submitted,

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